

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

v.

REYMUNDO SANCHEZ-HERNANDEZ

Respondent.

Civil No. 11cv1120-AJB(BGS)

**ORDER DISMISSING PETITION FOR  
WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241;  
DIRECTING CLERK OF COURT TO  
OPEN NEW CASE UNDER 28 U.S.C. §  
2255**

On May 19, 2011, Reymundo Sanchez-Hernandez filed a petition entitled “Petition for Actual Innocence Claim Pursuant to Habeas Corpus 28 U.S.C. § 2241.” Consequently, the Clerk of Court categorized this case as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. After the Court’s review of the petition, the Court notes that Petitioner seeks to challenge the sentence he received in this Court after a jury trial convicted him on August 17, 2000 in case no. 99cr2401-MLH. (Pet. at 6.) He was originally sentenced on October 22, 2001 before the Honorable Marilyn L. Huff. (*Id.*) After his case was remanded on appeal, Petitioner was re-sentenced on March 15, 2004. (*Id.*) Petitioner seeks to challenge the sentence imposed on March 15, 2004.

28 U.S.C. § 2255 provides that

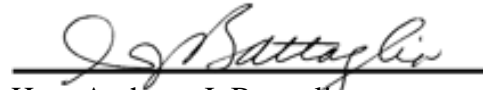
[a] prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255(a) (emphasis added).

1           Therefore, Petitioner should have labeled his petition as a 28 U.S.C. § 2255. Accordingly,  
2 the Court DISMISSES the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 as  
3 improperly plead and DIRECTS the Clerk of Court to open a new case under 28 U.S.C. § 2255.

4           IT IS SO ORDERED.

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6 DATED: July 1, 2011

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8 Hon. Anthony J. Battaglia  
9 U.S. District Judge  
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